

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

THE MACERICH PARTNERSHIP, LP, et al.,

Plaintiff(s),

v.

McCARTHY BUILDING COMPANIES, et al.,

Defendant(s),

v.

PACIFIC ERECTORS, INC., et al.,

NO. C03-2656P

ORDER ON MOTION FOR LEAVE
TO AMEND

The above-entitled Court, having received and reviewed:

1. McCarthy Building Companies, Inc's and SDL Corporation's Motion for Leave to Amend First Amended Answer and Affirmative Defenses and Third-Party Complaint
2. Macerich's Response
3. McCarthy Building Companies, Inc's and SDL Corporation's Reply

and all exhibits and declarations attached thereto, makes the following ruling:

IT IS HEREBY ORDERED the motion is DENIED.

This motion, which seeks permission to include the affirmative defense of impossibility of performance, was filed on the eve of trial (which, though now continued to a later date, was set for March 17 at the time of filing). It is not timely, nor is the request accompanied by sufficient factual or legal support to explain its necessity or validity at this late stage of the proceedings. Discovery is closed, precluding the opposing parties from developing further information about the basis for this new defense – not only is it untimely, but granting it would clearly prejudice the other parties to this litigation.

The clerk is directed to provide copies of this order to all counsel of record.

Dated: March__7__, 2006

A handwritten signature in black ink, appearing to read "Marsha J. Pechman", written over a horizontal line.

Marsha J. Pechman
U.S. District Judge